

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD  
HEARING HELD AT 4:30 P.M.  
May 20<sup>th</sup>, 2008  
UTILITIES COMMISSION, DEBERRY ROOM, 3<sup>RD</sup> FLOOR, 200 CANAL STREET,  
NEW SMYRNA BEACH, FLORIDA

The Hearing of May 20<sup>th</sup>, 2008 was called to order at 4:30 p.m. Answering to roll call:

Carol Kerrigan, Chairperson  
John Shelby, Vice Chairperson  
Michael Slayton  
Jay Crocker  
Keith Gerhartz  
Ken Taylor

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Chief Building Official Richard McFadden and Administrative Specialist Claudia Soulie. Board member Pat Arvidson arrived at 4:35 pm.

**DISCLOSURE OF EX PARTE COMMUNICATIONS:**

None

**APPROVAL OF MINUTES**

**Mr. Crocker made the motion to approve the minutes of the April 15<sup>th</sup>, 2008 hearing; seconded by Mr. Shelby. Motion carried on roll call vote 6- 0.**

**SWEARING OF CITY STAFF:**

Regina Lynne Kunkle, Code Enforcement Supervisor and Barbara Jo Bobelak, Code Enforcement Officer were sworn for testimony.

**CASES IN COMPLIANCE WITH THE BOARD'S ORDER:**

Ms. Soulie informed the Code Board members that the following cases came into compliance.

<u>C2007-0396:</u>	Joey Price	605 Downing
<u>C2007-0691:</u>	Tiro Beachwear, Inc.	Saxon Dr. – vacant lot

C2007-0813: Carol C. Lukban 213 Crawford Road  
C2008-0124: Charles Sutherland 400 Lincoln Ave

**Mr. Taylor made the motion to find the above cases in compliance; seconded by Mr. Shelby. Motion carried on roll call vote 6- 0.**

**OLD BUSINESS:**

**C2006-0139: Ocean Palms Beach Club, Inc.**

Violation of §303.1 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior of the buildings have not been maintained in good repair, is no longer structurally sound and sanitary and poses a threat to the public health, safety and welfare located at 2601 S Atlantic Avenue.

Violation of §303.2 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior wood surfaces of the buildings have not been protected from the elements and decay by painting or other protective covering or treatment located at 2601 S Atlantic Avenue.

Violation of §303.4 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted structural members have deteriorated and are no longer capable of supporting the imposed dead and live loads located at 2601 S Atlantic Avenue.

Violation of §303.5 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the foundation walls are no longer plumb and have open cracks located at 2601 S. Atlantic Avenue.

Violation of §303.6 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior walls have not been kept free from holes, breaks, loose or rotting materials and maintained weatherproof and properly coated to prevent deterioration located at 2601 S Atlantic Avenue.

Violation of §303.7 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the roofs have not been maintained which causes the interior to be exposed to the elements including rain that is causing deterioration to the interior of the building located at 2601 S Atlantic Avenue.

Violation of §303.11 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the exterior stairs and landing are no longer structurally sound located at 2601 S Atlantic Avenue.

Violation of §304.1 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the interior of the building is no longer structurally sound and unsanitary located at 2601 S Atlantic Avenue.

Violation of §304.3 of the International Property Maintenance Code, 1998 Edition by permitting or causing to be permitted the interior surfaces, including windows and doors, are no longer in good, clean and sanitary condition located at 2601 S Atlantic Avenue.

**July 18, 2006:** The Board found Ocean Palms Beach Club, Inc. in violation and gave them 30-days to secure the buildings and grounds including but not limited to: roofs, decks, windows, fencing and balconies and continued this case to the August 15, 2006 hearing.

**August 15, 2006:** The Board continued this case to the October 17, 2006, hearing for review.

**October 17, 2006:** The Board continued this case to the January, 16, 2007 hearing for review.

**January 16, 2007:** The Board made a motion to give Ocean Palms Beach Club, Inc. until the February 20, 2007 hearing to secure the buildings and grounds including but limited to roofs, decks, windows, fencing, balconies, soffits and to contract with a professional pest control company to remove and treat vermin issues, as well as submit a report on their plan of action to either renovate or demolish the structure with representation from the City Building Department to provide and concur with the feasibility of the plan of action and a timeline to be completed or face a fine of \$250.00 per day for each and every day this property remains in violation.

**February 20, 2007:** The Board found the subject property had been brought into substantial compliance such that the \$250.00 per day fine would not be imposed. The Board referred the case to the Building Department for enforcement through the Unsafe or Dilapidated Structures Ordinance and the Building and Trades Board.

**November 13, 2007:** The Board gave Ocean Palms Beach Club, Inc. 3 weeks to obtain the permits or face a \$250.00 fine per day for each day they do not have the permit. The Board gave Ocean Palms Beach Club, Inc. 150 days from 11/13/07 today to secure the violations or face a fine of \$250.00 per day for each and every day the violations exist.

**April 15, 2008:** The Board continued the case per the respondent's request until the 20<sup>th</sup> day of May, 2008.

**Fine Totals:**

Nine thousand seven hundred fifty dollars (\$9,750.00) for a total of 39 days, April 11, 2008 – May 20, 2008.

Mr. Edward Beazley, Attorney for Ocean Palms Beach Club, Inc. was present and representing Ocean Palms Beach Club. Mr. Beazley asked that the Board members be sworn in and under the penalty of perjury make their ex parte communications disclosures individually.

Mr. Beazley asked Assistant City Attorney McDole, if he had advised the Code Enforcement Officers on this case outside of the hearing. Mr. McDole stated that he had not given any advice or legal counsel to the Code Enforcement Officers other than procedural matters pertaining to the agenda.

Mr. Gerhartz recused himself from this case.

Mr. Beazley called Richard McFadden, Chief Building Official for questioning but Mr. McFadden was not present for questioning. Mr. Crocker asked if Mr. McFadden had been subpoenaed and Mr. Beazley responded that Mr. McFadden said he would be there voluntarily. Mr. Beazley said he could question other people before Mr. McFadden but asked if someone could make a telephone call to Mr. McFadden to see if he was available because he would want to continue the case until such time as Mr. McFadden could be present because he has very important information regarding this case.

Mr. McDole advised the Board that unless Mr. McFadden had been subpoenaed by the Board, there is no justification for a continuance.

Mr. McFadden arrived and was sworn for testimony. Mr. Beazley asked Mr. McFadden to inform the Board of his position, qualifications and length of service in his current position. Mr. McFadden stated that he is the Chief Building Official for the City of New Smyrna Beach and he holds nine (9) state licenses.

Mr. Crocker asked what kind of relief Mr. Beazley was seeking and inquired about the purpose of this testimony. Mr. Beazley stated that Mr. McFadden's testimony would be relevant in proving that Ocean Palms Beach Club was complying with the Board's order.

Mr. Beazley asked that Mr. McFadden briefly describe his licenses. Mr. McFadden stated that he has building, electrical, plumbing, and mechanical inspection, and plans review and a codes administrator certification.

Mr. Beazley asked Mr. McFadden if this would allow him to function as a code enforcement officer and Mr. McFadden agreed. Mr. McFadden further testified that he has had this position for seven (7) years.

Mr. Beazley requested to tender Mr. McFadden as an expert in the areas of code enforcement building regulations. This was without objection from Chairperson Kerrigan.

Mr. Beazley asked Mr. McFadden if he was familiar with Ocean Palms Beach Club and to give a brief summary of the work that was being performed there. Mr. McFadden stated that there is major structural work such as headers and tie beams that are being replaced, and that it is a structural renovation. Mr. Beazley inquired if active building permits were issued for this work, which Mr. McFadden confirmed.

Mr. Beazley asked if this is a typical construction site for renovations, which Mr. McFadden confirmed. Further Mr. Beazley asked, if under the City's codes, if this renovation work a proceeding that is in compliance with City codes, and Mr. McFadden questioned the City's codes being addressed since the City's codes do not address a timely manner or structural renovations.

Mr. Beazley showed Mr. McFadden a list of violations and entered the list into evidence, marked as Exhibit I. Mr. Beazley inquired if any of these violations currently exist at this time.

Mr. McFadden said no, but that he was addressing this as a construction site under renovation. Mr. Beazley asked if in Mr. McFadden's opinion if these violations existed on April 11, 2008 and Mr. McFadden confirmed that they did not.

Mr. Beazley – no further questions madam chairman.

Mr. Beazley thanked the Board and Mr. McFadden. Ms. Kerrigan asked if City staff had any questions for Mr. McFadden, which they did not.

Mr. Beazley called Mr. Reed Boardman as a witness and asked him for his business address and occupation. Mr. Boardman stated that he was a Real Estate Developer and a Public Adjuster. Mr. Boardman stated that he was retained by Ocean Palms Beach Club to assist them with the hurricane damage suffered to the property. Mr. Boardman informed the Board that Ocean Palms did not get reimbursed by their insurance company for any damages and the majority of unit owners stopped paying their dues. This put a hardship on Ocean Palms to secure funding to repair the damages and Mr. Boardman stated that they were in the process of addressing any permitting issues, obtaining loans and filing foreclosures against the defaulting unit owners and informed the Board of the time consuming effort it had taken to get to this point.

Mr. Beazley asked Mr. Boardman what type of work was done to correct the alleged violations. Mr. Boardman felt that, in his professional opinion, Ocean Palms was never in violation, since these were maintenance issues that had been resolved in accordance with the Board's direction and renovation work was still ongoing. Mr. Boardman presented the Board with an architectural drawing of what they intended the buildings to look like in the future.

Mr. Beazley thanked Mr. Boardman for this testimony. City staff had no questions at this time.

Mr. Beazley felt that the Code Board was faced with estimating what a reasonable time frame could be to repair/correct damages caused by the 2004 hurricanes. Mr. Beazley stated that the State of Florida passed Florida Statute Chapter 193.15.51 that dealt with the issue of being displaced from your home due to the hurricanes and still being able to keep homestead exemption and he felt that Ocean Palms was well within that timeframe.

Ms. Kunkle stated that she was not prepared to re-present this case, since the Board had already heard this case and most of the same testimonies. Ms. Kunkle continued that she was going by the notice of violation sent to Ocean Palms with the signature of the Chief Building Official, stating that these violations existed. Ms. Kunkle stressed that the Board found Ocean Palms in violation and gave them until April 11, 2008 to comply. Ms. Kunkle continued that the permit had been pulled in December 2007 and three (3) site inspections had been performed since then. One (1) inspection was performed on the temporary power pole and two (2) inspections on the tie beams. Mechanical, electrical and plumbing had not been addressed at this time, since work was still being performed on the structural aspect. Ms. Kunkle considered herself to be somewhat of an expert in code enforcement procedures, due to the length of time serving in this field and stated that the structure had not been brought into full compliance.

Mr. Beazley objected and stated that he would like to examine her qualifications if Ms. Kunkle was interested in testifying in the case as an expert.

Ms. Kerrigan felt that there had been a severe lack of communication between Code Enforcement and the Building Department and asked the Board for their input.

There was a brief question and answer session between the Board and Mr. McFadden, in which Mr. McFadden stated that in his professional opinion, the alleged violations had been corrected.

Ms. Kunkle stated that the City disagreed with this statement.

Mr. Taylor interjected that the question at hand was if Ocean Palms was in compliance with the Board's order or not and felt that the City's Chief Building Official answered that question by stating Ocean Palms was in compliance.

Mr. Beazley mentioned that the Board could site them tomorrow in a new case, but felt that Ocean Palms had complied with the current case.

**Mr. Crocker made the motion to find the above case in full compliance as of April 11, 2008; seconded by Mr. Taylor. Motion failed 3- 3. Mr. Gerhartz abstained.**

City staff recommended continuing this case until the July hearing and to meet on site for a field inspection.

Mr. William E. Hoffmeister and Mrs. Linda Hoffmeister, 2607 Hill Street, were sworn for testimony. Mr. and Mrs. Hoffmeister felt that a lot of promises had been made, one delay followed another and they objected to the slow progress.

Upon further review of the case by the Code Board and based on the testimony of Mr. McFadden the following motion was made:

**Mr. Slayton made the motion to find the above case in full compliance as of April 11, 2008; seconded by Mr. Taylor. Motion carried on roll call vote 6-0. Mr. Gerhartz abstained.**

**C2007-0003:            Clariece Everett            507 N. Duss Street            [POSTED]**

Permitting or causing to be permitted a vacant structure to exist, which has not been maintained in a clean, safe, secure, and sanitary condition thereby adversely affecting the public health and safety, in violation of §301.3 of the International Property Maintenance Code, 1998 Edition.

**January 15, 2008:** The Board found the subject property in non-compliance and gave the respondent until the 7<sup>th</sup> day of March, 2008 to bring the property into compliance or face a fine of \$250.00/day for each and every day the violation exist.

**Fine Totals:**

Nine thousand seven hundred and fifty dollars (\$9,750.00) for a total of 39 days, March 8 – April 15, 2008.

Mr. Joel Cray, Sr. was sworn for testimony. Mr. Cray stated that he inherited this property from his family. Since he lived out of town he only became aware of any issues about four (4) months ago at which time took appropriate steps to rectify any violations.

Ms. Bobelak confirmed that the property had been maintained and cleaned up and Mr. Cray had been in communication with staff.

**Mr. Slayton made the motion to find the above case in compliance and to reduce the current fine to zero (0) dollars; seconded by Ms. Arvidson. Motion carried on roll call vote 6-1 with Mr. Gerhartz casting the dissenting vote.**

**NEW BUSINESS:**

**C2007-0178:            Sunset Marine                            100 Donlon Drive St.            [SERVED]**

Permitting or causing to be permitted construction (boat dock cover) without the required permit in violation of §26-171. of the City Code of Ordinances.

Mr. Robert John Werner, owner of Sunset Marine was sworn for testimony. Ms. Kerrigan asked Mr. Werner if he wanted to contest the violation or simply supply the Board with information. Mr. Werner stated that he was under the mistaken impression that permits were not needed for temporary structures. Mr. Werner continued that as soon as he was made aware of his mistake, he obtained the necessary permit.

Ms. Bobelak confirmed that a permit had been issued.

Mr. McFadden stated that Sunset Marine was charged a double permit fee as well as a \$50 fine for an after-the-fact permit. Mr. McFadden continued that it was possible that Mr. Werner had inquired in the past about needing permits and was told no. However, regulations had changed since then.

Mr. Gerhartz had a problem with contractors not getting the necessary permits and getting off too easy.

**Mr. Crocker made the motion to find this case in compliance; seconded by Mr. Slayton. Motion carried on roll call vote 4-3 with Mr. Gerhartz, Mr. Shelby and Mr. Taylor casting the dissenting votes.**

**C2007-0179:            Sunset Marine                            101 Due East                            [SERVED]**

Permitting or causing to be permitted construction (boat dock cover) without the required permit in violation of §26-171. of the City Code of Ordinances.

Mr. Werner stated that this was the same situation as the previous case; however, he needed to apply for a variance because of the size of the structure. The property owner had been out of the country, causing additional delays.

Ms. Bobelak submitted photographs of the structure into evidence, after Mr. Werner had a chance to review them.

**Mr. Crocker made the motion to continue case C2007-0179 until the August 19<sup>th</sup>, 2008 hearing; seconded by Mr. Shelby. Motion carried on roll call vote 7-0.**

**C2007-0595: Sean & Jessica Pichelman 2504 S. Atlantic Ave. [SERVED]**

Permitting or causing to be permitted a business operation (2 or more rental units) without having paid the business license tax in violation of §74-146. of the City Code of Ordinances.

Case withdrawn by City staff.

**C2008-0259: Carol Ann Felber, Etal 700 Wayne Avenue [POSTED]**

Permitting or causing to be permitted construction (installation of windows and enclosed garage) without the required permits in violation of §26-171. of the City Code of Ordinances.

Nobody was present on behalf of this case.

Ms. Bobelak presented pictures taken on April 24, 2008 at the time the property was posted. Ms. Bobelak continued that there had been no communication between the property owner and City staff and the certified mail had been returned unclaimed.

Mr. McFadden stated that a stop work order that had been posted by the Building Department had been removed by someone and the work continued without permits. Mr. McFadden noticed that there was a dog in the house.

Mr. Taylor asked that Animal Control be notified to check on the animal. Staff duly noted that request.

Ms. Bobelak recommended the Board find the property in violation and give them a certain time to comply or levy per day fines.

**Mr. Shelby made the motion to find the above case in violation and the respondent shall obtain the required permit(s) within two (2) weeks of the date of receipt of this Board Order or two (2) weeks from the date the property is posted or face a \$200 per day fine for each and every day the required permit(s) had not been obtained; seconded by Mr. Gerhartz. Motion carried unanimously on roll call vote 7-0.**

**C2008-0264: Frederick Reid, Jr. 602 N. Atlantic Ave., Bldg. 2 [SERVED]**

Permitting or causing to be permitted an occupied building to exist with electrical outlets and fixtures, electrical wiring and equipment that has not been properly maintained and connected to a power source in violation of §304 of the Standard Housing Code, 1997 Edition.

Mr. George Green, with Beachside Realty was sworn for testimony. Mr. Green was representing the owner Frederick Reid, Jr. who lived out of town. Mr. Green informed the Board that the property was rented out three (3) years ago at which time the tenant procured electrical service and this had been an on-going issue since. Mr. Green asked for the tenant, Mr. Curic, to come to the podium and state his case.

Mr. Skye Curic was sworn for testimony. Mr. Curic stated that he had fallen on hard times, but had been in touch with the Utilities Commission (UC) to settle his account with partial payments on several occasions and was turned down. The UC's policy does not allow for partial payments. Mr. Green confirmed that statement as he tried to negotiate with the UC on Mr. Curic's behalf.

Ms. Bobelak stated that she had no recommendation in this matter.

The Board understood Mr. Curic's plight, but a violation existed that they had to enforce.

**Mr. Crocker made the motion to find the above case in violation and give the respondent thirty (30) days to come into compliance or face a \$50 per day fine for each and every day the violation was allowed to exist; seconded by Mr. Taylor. Motion carried unanimously on roll call vote 7-0.**

The Board informed Mr. Curic that the property owner would be responsible for any possible fines and gave Mr. Curic some suggestions on how his situation might be resolved.

Mr. Gerhartz offered to speak with the Director of the UC in regards to their full-payment policy. Mr. Slayton felt it would be beneficial to even address the UC Board.

### **REPEAT BUSINESS:**

None

### **DISCUSSION:**

Code Board Procedures

Ms. Kunkle asked for this topic to be deferred to the next hearing due to the late hour. The Board agreed.

### **ADJOURNMENT:**

**Mr. Crocker made the motion to adjourn at 6:50 pm and all agreed.**

Pursuant to Florida statute 286.0105, if an individual decides to appeal any decision made by the Citizens Code Enforcement Board with respect to any matter considered at this hearing, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. Such person must provide a method for recording the proceedings.

In accordance with the Americans with Disabilities Act (ADA), persons needing assistance to participate in any of these proceedings should contact the Administrative Specialist of the Citizens Code Enforcement Board listed below prior to the hearing:

Claudia Soulie  
Administrative Specialist  
% City Hall  
210 Sams Avenue  
New Smyrna Beach, FL 32168-9985  
Telephone: 386.424.2265  
Fax: 386.424.2148